

ORGANISATION
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OECD GUIDELINES FOR MANAGING CONFLICT OF INTEREST IN THE PUBLIC SERVICE
REPORT ON IMPLEMENTATION

Introduction

1. This report highlights the progress made in managing conflict of interest in the public service in OECD countries reviewed by the Public Governance Committee on 6 April 2006. The report also outlines arrangements in place for preventing conflict of interest in post-public employment and improving governance arrangements to ensure transparency in lobbying.

2. Following the approval of the *OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service*¹, twenty OECD countries reviewed their conflict-of-interest policy and practice. Responses to the OECD survey indicate that reviews identified weaknesses, particularly the lack of clarity and awareness, and put forward proposals principally for tightening restrictions and simplifying rules. Twenty-three countries have also updated arrangements – mostly focusing on standards – by enacting new Acts on conflict of interest, for instance in the Czech Republic, Italy and Spain; and revising regulations in Germany, Greece and Slovakia. Existing codes of conduct were modernised, for example in Canada, Ireland, Japan, Korea and Mexico, while Norway and Spain have developed new codes.

3. The Guidelines supported policy dialogue with non-Members, in particular in Latin America, Asia and South East Europe. In South East Europe most countries have passed new legislation on conflict of interest in the past three years, largely influenced by the OECD Guidelines.

4. As countries face the daily challenge of implementation, how can the OECD best help governments in putting new rules into practice and also addressing emerging concerns?² In response, the Public Governance Committee at its 31st session in April 2005 decided to launch a review of governance arrangements for preventing conflict-of-interest situations involving officials who have left public office and for improving transparency in lobbying. The attached report presents the main findings in these two particular interface areas between the public and private sectors and identifies concerns to be urgently addressed.

5. Survey results show that countries set general prohibitions and restrictions for avoiding conflict of interest in post-public employment, but established fewer mechanisms to put these rules into daily practice. A few countries, for example Germany and the United Kingdom, require that prospective employers be informed of imposed restrictions and conditions. A major challenge for many OECD countries remains the provision and application of adequate sanctions in case of a breach of post-employment rules.

6. To meet expectations of increased transparency, several proposals have been made to shed more public light on the relationship between public officials and interest groups. However, survey findings show that only five countries have established rules on lobbying, such as, by requiring reporting on lobbying contacts. Survey results show no single definition for lobbying but existing rules share a common approach, purpose, standards for transparency and measures for implementation. For example, lobbyists are obliged to disclose the purpose and name of their client and to provide periodic reports on lobbying activities.

¹ For further information on the OECD Guidelines for Managing Conflict of Interest in the Public Service, see www.oecd.org/gov/ethics.

² The 2003 Recommendation invited the Public Governance Committee to assess areas in which further work could be appropriate.

7. Building on the conclusions of the report that call for specific guidance to support policy makers in these two areas, the Public Governance Committee, in its 2007-08 Programme of Work and Budget, has been pursuing the elaboration of a practical handbook on effective measures to avoid conflict of interest after leaving public office³ and the development of a framework, including principles to support the design of governance arrangements for improving transparency and accountability in lobbying⁴.

³ The draft principles and good practice framework for avoiding conflict of interest in post-public employment were reviewed by the Expert Group on Conflict of Interest in June 2007. For further information see *Public Integrity and Post-Public Employment: Issues, Remedies and Benchmarks*, GOV/PGC/ETH(2007)3.

⁴ The Public Governance Committee reviewed the draft Framework on 17 October 2007 and supported the launching of consultations with stakeholders. For further information see *Building a Framework for Enhancing Transparency and Accountability in Lobbying*, GOV/PGC(2007)17.

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1. Progress made in managing conflict of interest in the public service

Maintaining confidence in public institutions has been a major concern in countries.

Conflict of interest has been a key issue in recent years, as preventing and managing conflict of interest in the public service have been considered critical for ensuring good public governance and vital to maintain trust in public decision making.

Two thirds of OECD countries reviewed their conflict-of-interest policy and practice ...

Following the approval of the 2003 *OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service*, countries made significant efforts to review and verify whether existing arrangements were still adequate to deal with emerging concerns, particularly resulting in the breaking down of barriers between the public and private sectors.

...and identified weaknesses, particularly the lack of clarity and awareness,...

Lack of clarity was identified as a common weakness both in countries with long-established codes of conduct, such as Canada, and in countries with a new code with complicated text, for example in Japan. Reviews also pointed out that uneven awareness of rules and policies presents a key barrier to implementation.

Results of reviews gave directions for improvement and proposed amendments to:

...put forward proposals for tightening restrictions and simplifying rules,...

- Improve clarity and tighten restrictions, for example in the new Ethics Code in Japan;
- Develop a new code of conduct, for example in Portugal;
- Update and simplify standards, for example in Mexico;
- Expand the scope of the code of conduct, for example in Korea to cover employees in public agencies, in addition to public officials in government; and
- Clarify terms in order to ensure consistent application, for example of the Standards of Ethical Conduct in the United States.

Specific suggestions for improving implementation include:

...strengthening implementation and enforcement mechanisms...

- Reinforcing awareness raising and monitoring, for example in Germany by the introduction of briefings and internal reviews;
- Simplification and harmonisation of disclosure forms and procedures, for example in Hungary and the United States; and

- Better co-ordination and monitoring by a central unit, for example, in Belgium, Germany, the Netherlands and Portugal.

...and also mapped out risks and identified emerging challenges...

Traditional rules and policies have been challenged by emerging new practices, such as:

- New types of sponsoring, for example in Germany; and
- Innovative forms of gifts and benefits, for example “editorial fees” in Japan.

Some countries also expressed emerging concern to establish adequate standards for:

- Those employees who carry out public tasks, although they are not employed by public organisations; and
- Public officials working in boards or committees of statutory authorities, public agencies and state owned enterprises.

...such as dealing with appearance of conflict of interest.

Increased media focus made it necessary in many countries to pay more attention to appearance issues, in particular at the top level, in post-public employment and lobbying. Providing options for improving and enforcing transparency mechanisms that could effectively deal with appearance of conflict of interest have been a concern in many countries, such as in Canada, Denmark, Poland and Portugal.

Reviews focused mostly on adequacy of existing legal rules and codes...

Reviews were intended principally to verify whether existing rules, laws and codes were still adequate:

- Effectiveness of existing rules or laws, for example, the incompatibility system in Spain, Portugal and France, and the criminal conflict-of-interest statutes in the United States; and
- The Values and Ethics Code for the Public Service and the Conflict of Interest and Post-Employment Code for Public Office Holders in Canada.

...and occasionally on specific instruments.

Establishing baseline data by surveys was a key concern in countries which introduced new codes and laws, such as Japan and Slovakia.

Some reviews put the spotlight on specific measures and mechanisms, including control mechanisms, for example in Belgium, Mexico and Greece; and financial disclosure systems, for example in Hungary, Spain and the United States.

Proactive reviews were conducted internally by the administration...

Reviews were generally conducted proactively by the administration and not driven by scandals. Although conflict of interest has been considered a sensitive issue, this proactive approach prevented the debate on the conclusions of reviews from becoming over politicised. Some countries even integrated reviews into periodic assessments to check the implementation of rules and standards, for example, in reviewing the implementation of the 1998 Directives in Germany, and the application of the 2000 Ethics Code in Japan.

...and exceptionally externally.

Few reviews were initiated *ad hoc*, by public concern, or requested externally by:

- Another branch of power, for example directed by the Congress in the United States.
- Independent audit institutions, such as the Auditor General in Canada, and *Cour des comptes* in France.

In the latter case, however, the 2003 report of the French supreme audit institution was immediately followed up by rigorous in-depth reviews by the Central Agency of Corruption Prevention (SCPC) on conflict of interest in the public service in 2004 and the private sector in 2005.

Over three quarters of OECD countries updated conflict-of-interest policy and practice to...

The vast majority of OECD countries updated key elements of their frameworks for preventing and managing conflict of interest, in particular:

- Codes of conduct – as a relatively flexible instrument it plays an essential role in setting standards on preventing conflict of interest. Consequently, several countries updated or issued new codes, for example both the Canadian Values and Ethics Code for the Public Service and the Conflict of Interest and Post-Employment Code for Public Office Holders were strengthened to ensure that they reflect government commitments to Canadians. Moreover, the Civil Service Code of Conduct in 2004 in Ireland and the Ethics Code were updated in 2005 in Japan, the Code of Good Governance was approved in 2005 in Spain⁵, and a new code of conduct was endorsed in 2005 in Norway⁶. The vast majority of central government agencies⁷ developed or updated their code of conduct following the approval of the Code of Ethics for Public Officials in the Federal Public Administration in Mexico.
- Laws – some countries even enacted new specific Acts on conflict of interest, for example in the Czech Republic, Italy and Spain. Several countries updated relevant existing regulations, for example new amendments tightened up restrictions for civil servants in Slovakia, the

...improve legal frameworks and...

⁵ For further information see *Modernising Conflict of Interest Policy and Practice: The Spanish Experience* GOV/PGC/ETH(2006)2.

⁶ For further details you may consult *Norwegian Ethical Guidelines and Post Employment Guidelines*, GOV/PGC/ETH(2006)4/ANN.

⁷ A survey in September 2005 by the Ministry of Public Administration indicates that 92.8% of 181 federal agencies or entities have a Code of Conduct and 81.7 % of agency codes include provisions to identify and avoid conflicts of interest.

1998 Directive was revised in Germany, and more severe sanctions were introduced in Greece.

...make existing arrangements more effective.

- Practical tools – for supporting awareness-raising and implementation, such as guidelines, toolkits and handbooks, for example in Canada, the Czech Republic, Finland, Germany, New Zealand and Norway.
- Institutional framework – establishment of the independent Office of Ethics Commissioner in Canada in 2004, a central unit for co-ordination in Germany, and the Ethics Board of Public Servants in Turkey in 2004.
- Implementing mechanisms – such as a new disclosure system in Norway in 2005, introduction of a “Blind-trust Stock System” in Korea in 2005 and streamlined asset and financial interest declaration procedures in Hungary.

The OECD Guidelines supported the debate, reviews and...

The OECD Guidelines have played an influential role to shape professional and public debate on conflict of interest in OECD countries. In general, the Guidelines were used as an international benchmark in reviewing existing arrangements, for example in France, Germany, Mexico, and designing new rules and mechanisms, for example on disclosure in Hungary and Korea.

...the update of conflict-of-interest policy and practice.

The OECD Guidelines provided a framework for the development of new legislation on conflict of interest, for example in the Czech Republic, Norway and Spain. The Spanish Code of Good Governance, approved by the Government in 2005, makes special reference to the OECD Guidelines. Other countries also incorporated specific measures from the Guidelines, for example in the Values and Ethics Code for the Public Service in Canada. In Australia, the New South Wales Independent Commission Against Corruption and the Queensland Crime and Misconduct Commission developed a set of guidelines modelled on the OECD Guidelines and a local version of the Toolkit for Managing Conflict of Interest.

The Guidelines were also translated in many countries to ensure wide distribution and use in policy review, for example, in the Czech Republic, Hungary, Portugal, Slovakia and Spain.

The Guidelines also supported dialogue with non-Member countries in the framework of a global partnership,...

To help managers put the Guidelines into practice a practical Toolkit for Managing Conflict of Interest in the Public Sector⁸ was developed, and then tested in several countries across regions. Non-Member countries have demonstrated high interest in using the practical approach developed by the OECD Guidelines and Toolkit. These instruments have played a key role in the policy dialogue between OECD and non-Member countries across the world, in particular:

- Raised awareness of decision makers by supporting a new understanding of the concept of conflict of interest in transition countries in Central and Eastern Europe, as well as developing new legal frameworks. For example, in South Eastern Europe the OECD Guidelines and Toolkit were

⁸

Managing Conflict of Interest in the Public Sector: A Toolkit at www.oecd.oeg/gov/ethics

endorsed at a High-level Forum in November 2003. The vast majority of these countries passed new legislation on conflict of interest in the following years that were largely influenced by the OECD Guidelines. In addition, the Toolkit was also translated into all major languages in the region and widely used for training.

- Supported the “establishment of clear rules and tools for identifying and managing conflicts of interest”⁹ in the framework of the ADB-OECD Anti-Corruption Action Plan for Asia-Pacific. Many countries, for example, the Philippines and Vietnam, have already used the Guidelines in the development of new laws, whereas the Toolkit was translated into Chinese to facilitate training.
- The OECD Guidelines and Toolkit also supported the implementation of the preventative measures of the Inter-American Convention against Corruption in Latin America. The Toolkit was recognised as a “practical instrument that could be adapted to national contexts in order to help the implementation of conflict-of-interest policies”¹⁰ in Latin-American countries. The Guidelines and Toolkit were translated into Spanish and Portuguese to support policy making and have already been used for training, for example in Argentina and Brazil.

...and reached out to the private sector.

The Guidelines were considered good practice in public governance that inspired corporate governance policies and practices, for example in the review of the OECD Principles of Corporate Governance¹¹. The Guidelines are also included in the OECD Risk Management Tool for Investors in Weak Governance Zones¹² and the OECD Policy Framework for Investment¹³.

The Guidelines have become a recognised international instrument...

The OECD Guidelines for Managing Conflict of Interest in the Public Service is the most comprehensive international instrument to assist governments and public institutions in reviewing and modernising their policy in this critical dimension of good public governance. The wide use of the OECD Guidelines indicated high level awareness of the Guidelines across Member and non-Member countries and demonstrated its relevance to influence professional and public debates on finding solutions to prevent and

⁹ First agreed priority in the Conclusions and Recommendations of the 4th Regional ADB/OECD Anti-Corruption Conference for Asia-Pacific, Kuala Lumpur, Malaysia, 3-5 December 2003, http://www1.oecd.org/daf/asiacom/pdf/conclusions_kl_051203.pdf.

¹⁰ Conclusions of the OECD/IDB/OAS Forum on Implementing Conflict of Interest Policies in the Public Service, 5-6 May 2004, Rio de Janeiro, Brazil, <http://www.oecd.org/dataoecd/55/5/31830920.pdf>

¹¹ The revised *OECD Principles of Corporate Governance* include new principles on improving transparency and preventing conflict-of-interest situations, for example to enable the board to exercise objective independent judgement on corporate affairs (VI. The Responsibilities of the Board). The revised Principles and annotations to the Principles can be consulted at <http://www.oecd.org/dataoecd/32/18/31557724.pdf>.

¹² The *OECD Risk Management Tool for Investors in Weak Governance Zones* can be consulted at <http://www.oecd.org/dataoecd/59/37/35719139.pdf>.

¹³ *The Guidelines for Managing Conflict of Interest* are included in the *OECD Policy Framework for Investment* in chapter 10 on Public Governance that focuses on regulatory quality and public sector integrity (for details see at <http://www.oecd.org/dataoecd/40/25/37408438.pdf>).

manage conflicts of interest in the public service. These experiences provide a sound basis on which to:

...that also provides a basis on which to address emerging challenges.

- Address emerging challenges, in particular at the public and private sector interfaces, such as post-public employment, lobbying, public procurement, sponsoring and public-private-partnership, but also at the political administrative interface; and
- Develop instruments and practical tools for reviewing existing governance arrangements and providing options for improving policy and practice based on agreed international good practice¹⁴.

¹⁴

The Expert Group on Conflict of Interest discussed major post-employment problem areas and also reviewed draft principles and good practice framework for avoiding conflict of interest in post-public employment in June 2007. For further information see *Public Integrity and Post-Public Employment: Issues, Remedies and Benchmarks*, GOV/PGC/ETH(2007)3.

2. Preventing conflict of interest in post-public employment¹⁵

OECD countries have encouraged movement of personnel between sectors to support labour market dynamism.

A growing challenge across OECD countries has been how to attract the “best and brightest” personnel to serve the public interest in public organisations. Several countries have encouraged movement of personnel between the public sector and the private sector. For example over three quarters of new entrants in senior positions came from outside the civil service in the United Kingdom and after a period of 4-5 years they sought to return to the private or non-profit sectors.

Facilitating the development of civil servants’ skills and competencies through gaining experience in the private sector is supported by public opinion in many countries¹⁶. Skill development and “removing barriers to labour market participation has become the key priority for most OECD countries”¹⁷.

However, suspicion of impropriety, such as misuse of “insider information” could jeopardize trust in public service.

Leaving public office also raises legitimate questions about the potential use of the special knowledge and insights of former public officials. The knowledge of commercially sensitive information, for example, could provide unfair advantage over competitors. Suspicion of impropriety, such as the potential misuse of “confidential information”¹⁸ for the illicit benefit of former public officials is a widely shared concern across OECD countries, as it could endanger confidence in public decisions and public officials.

Post-public employment could become a particularly highly sensitive issue during government transitions or periods of outsourcing and downsizing. More frequent interchange of personnel between sectors makes it crucial that:

- Standards for preventing conflict of interest properly reflect public expectations; and
- Existing mechanisms enable the effective application of standards in case of conflict-of-interest situations.

¹⁵ The term post-public employment covers situations when public officials leave public office – either temporarily or permanently – to work for the private or non-profit sectors.

¹⁶ For example, a survey in France indicated 70% support for putting in place a system that obliges civil servants to get experience in the private sector during their career (source: *Les Français et la Fonction publique, Sondage de l’Institut CSA*, February 2006).

¹⁷ *Towards More and Better-Paid Jobs: A Reassessment of the OECD Jobs Strategy*, OECD, 2006.

¹⁸ Information not available to the public, such as classified government information (e.g. on policy intention, national security, etc), data on personal privacy as well as commercially sensitive information (e.g. trade secrets).

Countries are aware of risks and set rules in legislation for avoiding conflict of interest...

The findings of the OECD review demonstrated that governments are aware of the potential risks of conflict of interest as a result of officials leaving public office. The vast majority¹⁹ of OECD countries set out prohibitions and restrictions in laws to avoid conflict of interest in post-public employment. Almost half of the OECD countries have also reviewed and updated arrangements; many of them have even further strengthened and reinforced prohibitions and restrictions in the last five years. For example, Conflict of Interest and Post-Employment Code for Public Office Holders in Canada was strengthened in 2006 to include more stringent post-employment provisions.

...in line with specific policy objectives.

Preventing the misuse of “confidential information” by former officials and minimising the possibility of using public office for unfair advantage in obtaining post employment are considered critical measures for maintaining trust in government and public decision making. Consequently, the primary objectives of post-public employment prohibitions and restrictions across OECD countries are to:

- Avoid use of “insider information” to the disadvantage of former employers in the public sector and/or potential competitors in the private sector.
- Discourage the inappropriate use of personal influence, and avoid suspicion of rewarding past decisions which may have benefited a prospective employer.

The approach of OECD countries is to focus on public officials rather than on prospective employers...

As a rule, post-employment prohibitions and restrictions predominantly apply to officials who leave public office. Seeking to impose restrictions on potential or new employers of former public officials is rather the exception in OECD countries.

Accepting future employment or appointment, for example to a board of directors, advisory or supervisory bodies, and misusing “confidential information” are at the centre of most prohibitions and restrictions. An emerging trend in OECD countries is the application of specific restrictions, for example to prevent:

...and set general prohibitions that are applicable to all public officials.

- “Switching sides”²⁰ in Canada, France, Ireland, Italy, Mexico, Turkey, the United Kingdom and the United States.
- Lobbying back to government in Canada, France, Mexico, the Netherlands, Portugal, Turkey, the United Kingdom and the United States.

¹⁹ Details on figures, trends and good practices can be consulted in *Avoiding Conflict of Interest in Post-Public Employment: Comparative Overview of Prohibitions, Restrictions and Implementing Measures in OECD Countries*, GOV/PGC/ETH(2006)3.

²⁰ Former public officials change sides in an ongoing procedure or negotiation to represent the opposite party in a contentious issue.

The findings indicate that OECD countries use more the approach of setting general prohibitions and restrictions for post-public employment that are applicable to all public officials. Restrictions may differ according to the level of officials in a few countries. For example, the more senior the official, the more stringent the restrictions are in Korea and the United States.

Specific restrictions are set in a few countries principally for the top level...

A minority of OECD countries have developed specific rules for certain categories of public officials. They focus principally on the most senior level, namely:

- Top decision makers, including ministers, cabinet members, senior political appointees and their advisors, Members of Parliament and Congress.
- Senior civil and public servants, chief executives and managers of state-owned enterprises.

...and exceptionally for risk areas.

Although paying adequate attention to risk areas, particularly at the public-private sector interface, is a key factor for successfully preventing conflict-of-interest situations after leaving public office, only very few countries have developed specific prohibitions and restrictions for at-risk areas, such as:

- Supervisory and regulatory agencies, for example, competition, energy, nuclear security agencies in Spain, regulators in the telecom and energy sectors, as well as the National Centre for Government Information Technology in Italy, and the financial institution regulatory agencies in the United States.
- Procurement and contract management, for example in Italy for officials overseeing public works, and in the United States when procurement and contracts exceed USD 10 million.
- Customs and tax administration, inspection, for example by fire departments in Korea, and handling or using public funds, for example in Mexico.

OECD countries seek reasonable time limits for tailored application of prohibitions and restrictions.

Finding the right balance in the legal framework is a key concern in OECD countries as excessive prohibitions and restrictions for post-public employment could create severe impediments to bringing knowledgeable and experienced people into the public service. Prohibitions and restrictions are generally considered temporary solutions, and countries seek to establish reasonable time limits tailored to the situation, such as:

- Before taking certain types of *new employment* outside the public service, the vast majority of OECD countries define a specific “*cooling-off*” period in the timeframe determined by laws. Among OECD countries the maximum fixed time limits range from six months, for example in Norway²¹, up to a five-year period in France and Germany.

²¹ For further details see *Designing and Implementing Post-Public Employment Regulations for Civil Servants and Politicians: The Norwegian Initiative*, GOV/PGC/ETH(2006)4.

In general this “cooling-off” period is one year, for example for public servants in Canada, Ireland, Mexico, Poland and Slovakia; or two years, for example in Japan, Korea, the Netherlands, Turkey and the United Kingdom. The length of a “cooling-off” period reflects socio-political concerns, and is often considered as a key measure to re-establish confidence in government. For example the new Federal Accountability Act²² in Canada introduced a five-year ban for ministers, ministerial staffers, transition team members and senior public servants in case of lobbying back to government. Although the “cooling-off” restrictions are principally employed to maintain trust in public service, they also provide a learning period for both former officials and those in the government to become used to their new relationship vis-à-vis one another.

- In case of using “*confidential information*” after leaving public office, OECD countries in general apply no fixed time limit, for example in Austria, Belgium, Canada, Denmark, Luxembourg and Sweden. However, restrictions for former public officials remain valid until the information becomes unclassified and public.
- To avoid “*switching sides*” in cases in which former officials have personally and substantially participated in the decision making, no fixed time limit is applied. The actual duration of the limitations depends on the life of a specific matter, for example a contentious issue.

Whereas several measures are used for communication of rules, few countries have established procedures for approval of new employment.

The survey indicates that although the vast majority of countries set general rules for preventing conflict of interest in post-public employment, countries established far fewer mechanisms to apply these rules in practice. A majority of countries employ a combination of measures for communication, such as briefings on appointment and on leaving, acknowledgment in writing that officials are aware of the rules, counselling and regular reminders.

However, only a few countries have established procedures for facilitating the application of prohibitions and restrictions. Canada, Ireland, Portugal and Spain, for example, request officials to disclose future employment and an approval is also required before taking up a new appointment.

Managers remain key in applying the rules, although, independent bodies have been created recently for ensuring unbiased approval-decision for senior level.

Managers play a key role in the application of rules. Making the approval-decision on post-employment cases is, for example, traditionally the responsibility of top management of public organisations, such as the secretary general of departments in Ireland, the head of the organisation for civil servants in Norway, the deputy head of public organisations for public servants in Canada.

In the case of the senior level, however, recently established independent bodies make the decisions, such as the Ethics Commissioner for public office holders in Canada, the Outside Appointments Board for assistant secretary level and above in Ireland, the Competition Authority in

²²

See Federal Accountability Act at http://www.faa-lfi.gc.ca/index_e.asp.

Italy, the Government Ethics Committee in Korea, and the Standing Committee on Outside Political Appointments for Politicians in Norway.

Although providing flexibility in case management is an emerging concern, few countries provide standards for it ...

Providing flexibility in the application of general rules in individual cases is an emerging concern. Applying flexibility in concrete cases may well require standards for deciding on exceptions and issuing waivers in order to ensure objectivity and fairness in the process and accountability of decisions. However, a few countries have developed standards against which such post-public employment approval-decisions can be made.

...and make available formal appeal mechanisms.

Decisions not approving post-public employment are not open to a formal appeal in the majority of countries. If formal appeal is available, the decisions can be appealed in general to an independent court or tribunal, and/or an administrative body within the public service.

Supporting application remains rather experimental...

Implementation of decisions on post employment generally remains the responsibility of former public officials. Support measures for tracking and ensuring implementation of approval-decisions are exceptionally employed, for instance:

...and needs to be strengthened based on good practices.

- Recording approval-decisions on individual cases for future tracking, for example in Canada, France, Japan, Norway and the United Kingdom.
- Making available past decisions for benchmarking, for example in France and Japan.
- Informing prospective employers of imposed restrictions and conditions, for example in Germany and the United Kingdom.
- Requesting information on the application of decisions, for example in Ireland and Korea.

The Internet provides an efficient tool for communication by making information available on decisions, for example on the decisions of the Standing Committee on Outside Political Appointments for Politicians in Norway. In the United States the Office of Government Ethics annually compiles a description of all of the prosecutions of the criminal conflict-of-interest statutes and makes that description available on its website²³.

Enforcing restrictions and imposing suitable sanctions remain a key challenge for many countries.

Dissuasive sanctions and their timely application provide preconditions for enforcing post-public employment prohibitions and restrictions. Although, a combination of traditional disciplinary, criminal and administrative sanctions is available for non-compliance, a major challenge for many OECD countries remains to provide and apply adequate sanctions in case of breaching post-employment rules:

- In many countries there are still no sanctions available. For example, sanctions are not specified in the laws in Turkey, and sanctions would require legislation for public office holders in Canada.

²³

The Conflict of Interest Prosecution Surveys can be consulted at http://www.usoge.gov/pages/laws_regs_fedreg_stats/other_ethics_guidance.html.

- Existing sanctions have been considered insufficient in a few countries, as they can only be applied for public officials while they are in office, for example in Slovakia. In Spain, the sanctions were considered ineffective and the Government proposed to establish a more severe sanction regime by the new Act on Conflict of Interest approved in spring 2006.
- Lack of control mechanisms to impose sanctions on former public servants is an additional challenge, for example in case of breach of code of conduct.

The OECD develops tools to address these challenges.

The survey results give a unique insight for policy makers on trends and solutions for avoiding conflict of interest after leaving public office. Based on reviewed good practices, the development of principles and practical tools, such as good practice framework with examples could particularly help policy makers in choosing adequate solutions amongst available options.

3. Improving governance arrangements to ensure transparency in lobbying

Public opinion has raised questions about the legitimacy of public decisions.

Existence of large interest groups and their efforts to influence policy making is a reality in modern democracies. However, assertions are made that it frequently borders on influence trafficking and that lobbyists have privileged access to decision makers and their representations too often take place behind closed doors where the public interest may not be well represented. At this point the integrity of public institutions becomes threatened.

Purely penalising illegal influencing of public decision making, however, may not be sufficient to maintain trust in decision making. “Good governance” arrangements, particularly those clarifying expected standards of behaviour and improving transparency and accountability of decision making become essential.

Ensuring impartial decision making is a key concern for ministers to maintain trust in government.

“Vocal vested interests” over the “wishes of the whole community” in public decision making was considered a major threat to public trust at the OECD Ministerial meeting on *Strengthening Trust in Government: What Role for Government in the 21st Century?*²⁴. Maintaining trust in the legitimacy of public decisions requires functioning frameworks and arrangements for ensuring:

- Transparency – by enhancing openness on actors influencing policy making as the public has a right to know how public decisions were influenced by stakeholders or vested interests; and
- Accessibility – by providing a level playing field for all stakeholders interested in participating in the development of public policies in order to ensure that the “public” also has a voice, and not only the “privileged”.

Good governance also involves anticipation of risks and potential solutions.

There is limited concern about lobbying activities in many European countries. For example, in Scandinavian countries established practices, unwritten traditions and social partnership recognise interest groups and provide them with access to decision makers. However, influenced by the various scandals in the past decade, public opinion increasingly considers existing lobbying practices as somewhat illegal or at least unethical and calls for immediate action.

²⁴

Statement by the Chairman Mr. Alexander Pechtold, Minister of Government Reform and Kingdom Relations, The Netherlands on 28 November 2005 in Rotterdam. The full text of the Statement can be consulted at <http://www.oecd.org/dataoecd/0/11/35806296.pdf>. Further information on the event is available at <http://www.modernisinggovernment.com/>.

After a decade public expectations have given new impetus to revisit current arrangements for transparency in lobbying.

The OECD survey shows²⁵ that only five countries²⁶ have already set specific rules on lobbying, and even fewer have experience of long-established legal frameworks for improving transparency and accountability in lobbying. Public expectations in the early nineties were at the origin of the updates of rules in Canada and the United States, when the European Parliament also established new rules on lobbying at the supra-national level.

After a decade of experience in implementing regulations on lobbying, higher expectations of transparency and integrity brought lobbying back to the political agenda both in North America and the European Union. The issue of formal regulation on lobbying also reached political support in a growing number of countries across the world.

Commitment to improve existing systems is demonstrated by initiatives across countries.

Several proposals for legislation on lobbying have been presented to legislators in North America, Europe and Asia to meet expectations of increased transparency through putting more public light on the relationship between public officials and representatives of interest groups. However, setting rules for lobbying has proved very difficult in many cases because it is not only an important aspect of good governance but also a sensitive political issue.

Sharing lessons on key aspects of existing arrangements provides potential solutions...

Although government programmes – for example in Hungary, Ireland and Slovakia – and broad socio-political consensus – for example the K-PACT²⁷ in Korea – widely supported the development of a legal framework for lobbying in the past few years, concrete proposals were often rejected by legislators. It took a long drawn-out debate in many countries, for example in Hungary, Ireland, Mexico, Poland and Slovakia to reach political consensus on the approach and key elements, such as definitions, scope and effective implementation measures that could be included in proposals for laws.

...and supports depoliticised debate on key aspects of lobbying.

Existing experience of OECD countries shows that the following aspects need to be looked at when regulation on lobbying is considered :

- Aims – Why legislation, what is the purpose of rules?
- Subject – What is lobbying and what activities are excluded?
- Scope – Who is a lobbyist and who is the lobbied?
- Standards of behaviour – What standards could reflect public expectations?

²⁵ For details on approaches and regulations in OECD countries see *Governance Arrangements to Ensure Transparency in Lobbying: A Comparative Overview*, GOV/PGC/ETH(2006)5 and *Lobbying: Key Policy Issues*, GOV/PGC/ETH(2006)6.

²⁶ Canada, Hungary, Poland, the United Kingdom and the United States.

²⁷ Article 15 of the Korean Pact on Anti-Corruption and Transparency supported the preparation of legislation on lobbying.

- Implementation – How to increase transparency and administer implementation?
- Compliance – How to combine incentives, sanctions and enforcement to increase compliance?

Findings show several commonalities in key elements that could be considered in policy design, including...

Survey results show that no single concept and definition exist for lobbying in OECD countries. The common approach of rules providing governance arrangements for lobbying in OECD countries is to principally focus on the lobbyists. However, guidance may also be provided for public officials, for example in the Directory of Civil Service Guidance in the United Kingdom.

Key commonalities of existing rules on lobbying are, in particular:

...purpose of rules,...

- Their overall aim is to increase transparency and to maintain trust in public decision making. The development of the 2005 Polish Act on Legislative and Regulatory Lobbying reveals how the original aim to support the prevention and prosecution of trading in influence by the Bill prepared by the Government was transformed during the Parliamentary debate in order to improve transparency in law making²⁸.

...formal sources of rules,...

- Their primary source is legal regulations, though codes of conduct also set rules, particularly for clarifying expected standards of conduct for senior public officials. Voluntary codes in the public sector are rarely used in OECD countries.

...transparency standards and...

- Measures for increasing transparency are at the heart of lobbying regulations. Similar standards for transparency reflect shared expectations across OECD countries with rules on lobbying, for example, requiring registration of lobbyists to provide a basis for ensuring transparency of lobbying activities. Lobbyists are commonly obliged to disclose the purpose and name of their client when undertaking lobbying, and to provide periodic reports on key aspects of lobbying activities. An emerging trend is to request more disclosure on issues of growing concern, such as providing information on lobbying expenses, contingency payments, public funding received by their client, past employment of lobbyists as public official. Moreover, countries also make reports with disclosed information public to allow closer public scrutiny²⁹.

...support measures for implementation.

- Improving compliance is a common concern across countries. Review and verification of information provided in registrations and reports are the most commonly used measures for supporting the implementation of rules. Countries also explore the potential benefits provided by the Internet, in particular in filing lobbying registration and disclosure

²⁸ For details on the preparation of the Polish Act on Legislative and Regulatory Lobbying see *Developing a Legal Framework for Lobbying: The Polish Experience*, GOV/PGC/ETH(2006)7.

²⁹ For example the Lobby Reports received by the Office of Public Records of the United States Senate can be viewed at <http://sopr.senate.gov/> where visitors can also search in thirteen different criteria.

reports, for example mandatory electronic filing should be submitted to the Clerk of the House of Representatives in the United States³⁰.

Survey findings reveal diverging aspects in defining the subject,...

Survey results also revealed diverging views on key aspects of rules on lobbying, such as:

- Definition of lobbying – There is no single definition used across OECD countries. Legal rules often establish very complex definitions, for example in Canada and the United States; or focus exclusively on limited aspects, such as lobbying in the law-making process at the central level in Poland.

...delimiting the scope,...

- The primary scope of regulations is professional lobbyists who receive compensation for their activities. However, the definitions and even the classification of lobbyists differ from country to country. For example, Canada recently introduced further distinction between corporate and other organisations' in-house lobbyist, in addition to consultant-lobbyists. Lobbying activities undertaken without payment would also constitute lobbying according to, for example, the proposed Bill on Lobbying in Slovakia.

...providing administering capacity...

- Administering agencies as well as penalties vary from country to country. There is no single solution to determine the body in charge of administering the rules on lobbying. According to the national context, this organisation can be entirely independent, such as the Registrar in Canada, the Clerk of the House of Representatives and the Secretary of the Senate in the United States. Countries that more recently passed laws on lobbying dedicated an organisation subordinated to central government ministries in Hungary and Poland to administer their lobby legislations.

...and sanctions...

- Sanctions are generally imposed either on public officials or on lobbyists with the exception of the United Kingdom where both administrative sanctions for lobbyists and disciplinary sanctions for officials could be applied.

...as these elements should be closely considered in the country context.

These diverging aspects may direct policy makers in identifying what elements of legislation on lobbying should principally reflect domestic concerns and be closely considered in the national socio-political and administrative context. A proper definition of lobbying, for example, is essential as it provides a basis for adequately addressing public concerns in a given country. A too narrow or too wide definition could possibly render legislative efforts ineffective.

Challenges, such as improving compliance remain.

Achieving compliance remains a constant challenge across countries to put rules on lobbying into effect. Commitment to review the actual level of compliance and involvement of stakeholders in the review process are two fundamental pillars to provide options for improving existing rules and arrangements for their effective application.

³⁰

For more information on the mandatory electronic filing, including the Lobby Registration Form and the Lobby Reporting Form, see the new Lobbying Disclosure website at <http://lobbyingdisclosure.house.gov/>.

Developing a proactive approach to properly reflect increasing public expectations...

...and better combine measures for improving standards of behaviour and transparency in lobbying...

...can be supported by practical instruments developed on the basis of identified good practices.

The survey findings provide grounds for developing a proactive approach to support, in particular:

- Awareness raising and understanding of the potential risks of lobbying practices to the integrity of public decision making.
- Preparedness of decision makers to properly address emerging concerns, and to find adequate solutions that appropriately reflect expectations in order to avoid overreacting.

If legislation or regulation is determined to be necessary, the central choices lie within a spectrum between disclosure of lobbying activities to improve transparency and accountability at one end, and regulation to set standards of conduct for public officials and/or lobbyists in line with public expectation at the other.

Maintaining trust in democratic institutions requires clarification and daily application of the “rules of the game” in decision making. The development of an OECD Framework³¹ including principles to support building governance arrangements for improving transparency and accountability in lobbying will provide decision makers with policy options, based on good practice, to properly address this sensitive political issue, and to promote integrity of public institutions through application of good governance principles in daily practice.

³¹ The approach and elements of a framework were discussed at the Special Session on Lobbying in June 2007 (for further details see www.oecd.org/gov/ethics/). The resulting draft Framework was reviewed by the Public Governance Committee at its 36th session in October 2007. The Committee also supported the launching of consultations to obtain the views of stakeholders. For further information see *Building a Framework for Enhancing Transparency and Accountability in Lobbying*, GOV/PGC(2007)17.